Filed 2/7/03 H.H. v. Superior Court CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

H. H.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY SERVICES AGENCY,

Real Party in Interest.

F041820

(Super. Ct. Nos. 505052, 505053, 505054, 505055)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Nancy Williamsen, Commissioner.

John Hillenbrand, for Petitioner.

No appearance for Respondent.

Michael H. Krausnick, County Counsel and Linda S. Macy, Deputy County Counsel, for Real Party in Interest.

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*Before Dibiaso, A.P.J., Buckley, J., and Wiseman, J.

Petitioner seeks extraordinary writ review (Welf. & Inst. Code,[1] §366.26, subd. (*l*); Cal. Rules of Court, rule 39.1B) of respondent court's order setting a section 366.26 hearing on January 13, 2003, as to his four daughters, H.D.H., H.L.C., D.P.C., and D.L.H. On December 31, 2002, this court stayed the section 366.26 hearing until further order of this court to allow for filing of the juvenile court record. We have reviewed the merits of petitioner's claim the court erred in terminating reunification services at the 18-month review hearing and affirm the judgment. We also vacate the stay and direct the juvenile court to set a new section 366.26 hearing.

STATEMENT OF THE CASE AND FACTS

Petitioner and Gail C. are the biological parents of the minor children. The family has a long history of Child Protective Service (CPS) involvement dating back to 1997 and implicating three counties. The family problems stem from petitioner's mental instability and Gail's drug abuse. As a result, the family was sometimes homeless and the children were filthy, living in filthy conditions and exposed to domestic violence. CPS records reflect recurring incidents of domestic violence perpetrated by petitioner against Gail and the children, including an incident in 1998 in Humboldt County when petitioner threw D.P.C., then under two years of age, out of a moving car while she was strapped in her car seat. On March 27, 2001, the Lake County Department of Social Services (department) substantiated a referral that the children's teenage male cousin pinched, beat and intimidated them and handcuffed two of them in his bedroom. The responding social worker found the family living in a trailer with feces all over the floor. The department took the children into protective custody and filed a dependency petition pursuant to section 300, subdivision (b) alleging petitioner and Gail failed to protect the children.

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In August 2001, the Lake County juvenile court assumed dependency jurisdiction and ordered reunification services for both parents. Petitioner's reunification case plan required him to complete domestic violence counseling, obtain a mental health evaluation and participate in any recommended treatment and submit to random drug testing. A mental health professional concluded petitioner's mental health problems could be managed by medication. In November 2001, the children were placed with their paternal aunt and uncle. Around that same time, petitioner moved in with his parents in Modesto. In December 2001, the juvenile court found petitioner's true residence to be Stanislaus County and issued a transfer order.

On May 7, 2002, the Stanislaus County juvenile court accepted the case in transfer,[2] adjudged the children dependents of Stanislaus County and granted the children's paternal aunt de facto parent status.[3] The court ordered petitioner to continue domestic violence counseling, take his medication as prescribed, complete an intensive parenting program, and submit to random drug testing.

In its 18-month review, the Stanislaus County Community Services Agency (agency) recommended the court terminate reunification services because, while petitioner and Gail made efforts, neither had completed their case plans. Gail discontinued services in Stanislaus County and returned to Lake County. Petitioner continued to reside with his parents and actively participated in his case plan. He was

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[2] A delay in transfer occurred when the Stanislaus County juvenile court originally accepted the case and then, failing to notice the statement of paternity and order filed by counsel for petitioner in Lake County, transferred it back to Lake County.

[3] Gail C. filed a Notice of Appeal under this court's case number F040761 challenging the court's finding made on May 7, 2002 that the Indian Child Welfare Act did not apply in the instant dependency proceedings. While we make no comment on the merits of her claim on appeal, we would urge the juvenile court to address the issue as appropriate before it sets a new section 366.26 hearing. (*In re H.A.* (2002) 103 Cal.App.4th 1206, 1209.)

compliant with his medication and completed parenting classes. He also completed domestic violence classes, however, according to his counselor, he needed an extended period of counseling to address relationship issues. In a letter dated August 30, 2002, his counselor stated "[petitioner] seemingly loves his children, but I am not certain that he understands the issues or parameters of what it entails to provide a safe, secure, and loving home for them." Additionally, petitioner had not secured suitable housing and seemed to rely on his sister to take care of the girls. The department concluded petitioner had not demonstrated the ability to maintain a stable living environment for his daughters. The agency also reported the girls were progressing in the care of their paternal aunt and uncle. They were at grade level and made marked improvements in their behavior and personal hygiene.

The matter was contested and heard on October 28, 2002. Petitioner testified he completed all case plan requirements and identified a house to rent. He denied knowing he needed further domestic violence counseling and disputed his need for it. He conceded he never cared for his daughters by himself for more than a few days or weeks at a time. However, he stated he and Gail had all the help they needed from his family.

County Counsel argued there was a substantial risk of detriment if the girls were returned to petitioner's custody because he did not have suitable housing for his daughters and he did not believe he needed domestic violence counseling. County Counsel further argued petitioner had never parented by himself and he was complacent about others caring for his children. In addition, petitioner had not ruled out reuniting with Gail and she had not completed her case plan. Finally, County Counsel argued it would not be in the children's best interest to return them to petitioner's custody.

Petitioner argued he substantially complied with the case plan and asked the court to grant him additional time to complete the service plan requirements.

The court found return of the children to petitioner's custody would create a substantial risk of detriment to them. The court also found petitioner and Gail were

provided reasonable services, but failed to complete their case plans. The court specifically noted, as to petitioner, his failure to obtain housing, his questionable ability to provide a safe, secure and loving home and his need for additional domestic violence counseling. Accordingly, the court terminated reunification services and set the matter for permanency planning. After the court ordered its findings and orders, the court denied petitioner's request for a bonding study.

DISCUSSION

In a barebones petition,[4] petitioner claims the court erred in terminating reunification services after 18 months and in denying his request for a bonding study. He makes no attempt to support his legal contentions with citations to the record or to legal authorities. Such a glaring deficiency would ordinarily result in a summary dismissal of the petition for failure to comply with the procedural requirements of California Rule of Court, rule 39.1B. However, to avoid any potential claim of ineffective assistance of counsel, we will address the merits.

Petitioner contends there was insufficient evidence to support the court's finding by clear and convincing evidence that return of the children to petitioner's custody would be detrimental to them. Section 366.22, subdivision (a), the governing statute at the 18-month review hearing, imposes the less stringent preponderance of the evidence standard and provides in relevant part:

> "The court shall order the return of the child to the physical custody of his or her parent … unless the court finds, by a preponderance of the evidence, that the return of the child … would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.…"

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[4] This makes the third time in two months this court has commented on the inadequacy of the petition filed by the attorney of record. (See F041676, F041974). Counsel is once again reminded to review and comply with the California Rules of Court pertaining to the filing of extraordinary writ petitions.

We review the juvenile court's finding of detriment for substantial evidence. (*In re Zacharia D*. (1993) 6 Cal.4th 435, 455.)

In this case, substantial evidence supports the juvenile court's finding of detriment. Eighteen months after the children were placed in protective custody, petitioner was still not prepared to resume custody of them. He had not established a home for them nor demonstrated his ability to parent them on his own. More compellingly, he seemed intent on recreating the situation that resulted in the children's removal. He had not completely resolved his domestic violence issues and he left open the possibility that he would reunite with Gail, who had not completed her case plan. In light of the evidence, we conclude the court properly terminated reunification services at the 18-month review hearing.

Petitioner further claims the court abused its discretion by not ordering a bonding study. We disagree. There is no statutory requirement that the court order a bonding study. (*In re Lorenzo C*. (1997) 54 Cal.App.4th 1330, 1339.) Moreover, there is no evidence that lack of bond between petitioner and his daughters was at issue or that a bonding study would have been any more useful to the court than the observations of the caregivers. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. The stay issued by this court on December 31, 2002 is vacated and the juvenile court is ordered to set a new section 366.26 hearing. The juvenile court is reminded the applicability of the Indian Child Welfare Act is under review in this court in case number F040761 and urged to consider any impact it may have on the instant case before setting a new section 366.26 hearing. This opinion is final forthwith as to this court.